STARLITE CERAMIC INDUSTRY LTD. v. HIAP HUAT POTTERY

[O.C.J. (Choor Singh J.) February 21, 1973]

[Singapore — Summons-in-Chambers No. 797 of 1972 in Suit No. 2057 of 1971]

Practice and Procedure — Costs — Plaintiff accepting amount paid into court in settlement of claim — Whether plaintiff entitled to "getting up" fee — Discretion of taxing officer — R.S.C. 1970, O. 59 r. 10(2) and Appendix I, item 26.

The plaintiffs issued a writ in these proceedings on 17 December, 1971 claiming $12,383.45 on dishonoured and non-acceptable bills of exchange which were for goods sold and delivered. The writ was served on the defendants on the 27 December, 1971. The defendants entered appearance on 1 January, 1972 and on 4 January, 1972 they paid $10,299.03 into court. The plaintiffs accepted the amount paid into court in full settlement of their claim and discontinued the proceedings. The plaintiffs' solicitors then taxed their bill of costs which included an item of $700.00 for "getting up" done before the issue of the writ. The Registrar disallowed this item and the plaintiffs applied to the court for a review of the taxation.

Held: the plaintiffs were clearly entitled to tax their bill under O. 59 r. 10(2) and although they were not entitled to a "getting up" fee in the proper sense of this term, they were entitled to a fee under item 26 of Appendix I to O. 59 the amount of which was entirely in the discretion of the Registrar as taxing officer. As the Registrar had not done so the court would fix the fee at $200.00.

General observations on "getting up" fee.

Cases referred to:

(1) *Giles* v. *Randa* [1915] 1 K.B. 290.

(2) *Smith* v. *Bullu* (1875) L.R. 19 Eq. 475.

(3) *Richardson* v. *Richardson* [1895] P. 346.

(4) *In re Kana Moona Syed Abubakar decd.* [1940] M.L.J. 4.

(5) *Chin Cham Sen* v. *Foo Chee Sang & Anor.* [1952] M.L.J. 99, at p. 100.

(6) *Malayan Trading Co. & Anor.* v. *Lee Pak Yin* [1941] M.L.J. 207 at p. 209.

(7) *Harrison* v. *Leutner* (1881) 16 Ch.D. 559.

(8) *Windham* v. *Bainton* (1888) 21 Q.B.D. 199.

(9) *Slingsby* v. *Attorney-General* (1918) 119 L.T. 104.

(10) *Bright's Trustee* v. *Sellar* [1904] 1 Ch. 369.

(11) *Pecheries Ostendaises* v. *Merchants' Marine* [1928] 1 K.B. 750.

(12) *Chop Yoon Kee Hang* v. *Motor Union Insurance Co. Ltd.* [1932] M.L.J. 67.

(13) *The State of Selangor* v. *Kepong Dredging Co. Ltd.* [1932] M.L.J. 181.

(14) *Lee Kheng* v. *Yap Ee Boon* [1934] M.L.J. 126.

(15) *Looi Guan Kway* v. *Low Lean Bok* [1939] M.L.J. 224.

(16) *Jendol & Anor.* v. *Ng Beng Chan* (Singapore Suit No. 1574 of 1961, unreported).

(17) *Lee Bang* v. *Nadzri* [1965] 2 M.L.J. 186.

(18) *Mahmood bin Ghani* v. *Seow Sin Hwa* [1967] 1 M.L.J. 277.

APPLICATION FOR REVIEW

Harry Elias for the appellants.

Giam Chin Toon for the respondent.

Choor Singh J.: This is an application by the plaintiffs for a review of the taxation of their bill of costs and the question raised is whether or not a fee for "getting up" done before the issue of the writ should be allowed.

The plaintiffs issued the writ in these proceedings on the 17th December 1971 claiming $12,383.45 on dishonoured and non-accepted bills of exchange which were for goods sold and delivered. The writ was served on the defendants on the 27th December 1971. The defendants entered appearance on the 3rd January 1972 and on the 4th January 1972 they paid into court the sum of $10,299.03. The plaintiffs accepted the amount paid into court in full settlement of their claim, took the said sum out of court and discontinued the proceedings. The solicitors for the plaintiffs then taxed their bill of costs which included an item of $700 for "getting up" done before the issue of the writ. The Registrar disallowed this item. The plaintiffs object to this disallowance and they want me to review the taxation and allow the said item.

The contention of counsel for the plaintiffs that they are entitled to a fee for the "getting up" done by their solicitors before the issue of the writ raises questions of considerable practical importance and does not appear to have been the subject matter of any prior judicial determination in Singapore.

It is necessary to consider the principle upon which a solicitor is remunerated for prosecuting or defending an action and the general principles applicable when taxation of costs is reviewed by the court. A solicitor's bill is subject to taxation although it may not always be taxed and the taxation of a bill of costs may proceed on one of three basis. These basis which are clearly explained in the case of *Giles* v. *Randal*,[1] differentiate as between (a) party and party costs, (b) solicitor and client costs, and (c) solicitor and own client costs. A detailed consideration of the principles underlying the segregation of the solicitor's costs into these three classes or headings is not necessary for the purposes of this case. It is sufficient to state that the costs falling under heading (a) are taxed in the strictest manner in conformity with the Rules of the Supreme Court whilst those falling under headings (b) and (c) are taxed on a more generous scale, those under heading (c) being taxed on the principle that all reasonable costs and expenses should be allowed to the solicitor consistent with the retainer given to him by his client.

It is clear from the principle laid down in *Smith* v. *Bullu*,[2] that the costs chargeable under a taxation as between party and party —

"are all that are necessary to enable the adverse party to conduct the litigation and no more. Any charges merely for conducting the litigation more conveniently may be called luxuries and must be paid by the party incurring them."

It follows that a solicitor is entitled to costs of such work as was reasonably necessary for the prosecution or defence of his client's case.

This somewhat modifies the dicta of the Court of Appeal in the case of *Richardson* v. *Richardson*,[3] to the effect that —

"the object of giving costs was to indemnify the successful party against the expense to which he had been put by the unsuccessful party,"

for one might infer from these observations that an award of costs on a party and party basis is in the nature of a complete indemnity, which is not the case.

Another general rule is that the court will not interfere with the discretion of the taxing officer upon a mere question of *quantum* if the taxing officer has exercised his discretion after considering all the circumstances and if no question of principle arises. *In Re Kana Moona Syed Abubakar decd.*,[4] Aitken J. said at page 7: —

"... the rule that a judge must not interfere with the decision of a taxing officer on a mere question of quantum, unless very exceptional circumstances are present, is both settled and of long standing. I suppose that a judge would be justified in reducing a very exorbitant charge, in the unlikely event of the Registrar allowing one; and *Smith* v. *Bullu*, lends some support to that proposition. Per contra I suppose that a judge would be justified in allowing more than the Registrar has allowed, if the Registrar's disallowance amounted to an affront to reason and common sense...."

And twelve years later Thomson J. (as he then was) expressed the same view in *Chin Cham Sen* v. *Foo Chee Sang and another*,[5] at page 100: —

"... It is well settled in England that as a general rule the court will not interfere with the discretion of a taxing officer upon a mere question of quantum if the taxing officer has exercised his discretion after consideration of all the circumstances and if no question of principle arises (see *In Re Estate of Ogilvie*, [1910] P. 242)...."

Similar views were expressed by Gordon-Smith J.A. in *Malayan Trading Co. and another* v. *Lee Pak Yin*,[6] at Page 209: —

"... It is, I think, unnecessary to quote any authorities in regard to the powers, and I would add, assumed competency, of a judge sitting in appeal on a taxation matter, as it is well settled that in regard both to quantum and to the exercise of a discretion vested in a taxing master, it is only when such discretion has been exercised on a wrong principle or the quantum allowed is obviously wrong that a judge will interfere...."

The dispute in the present case is not on quantum. It raises a question of principle, namely whether a solicitor is entitled to costs for work done before the issue of the writ. In England it is well settled that such costs are available to a solicitor. It was decided as far back as 1881 in *Harrison* v. *Leutner*,[7] that a solicitor is entitled to "costs of all work in preparing, briefing or otherwise relating to affidavits or pleadings, reasonably and properly and not prematurely done, down to the time of any notice which stops the work" and that "the Taxing Master, having regard to the circumstances of each case, must decide whether the work was reasonable and proper and the time for doing it had arrived."

In *Windham* v. *Bainton*,[8] the court held that a master had a discretion to allow charges and expenses properly incurred by the defendant in procuring evidence where the plaintiff, having given no notice of trial, subsequently discontinued the action. Manisty J. observed at page 201, that

"if the costs and expenses of procuring evidence were properly and reasonably incurred, I think it makes no difference that they were incurred before notice of trial,"

and Stephen J. concurred with this opinion.

In *Slingsby* v. *Attorney-General*[9] the Court of Appeal held that the burden is upon the party bringing in a bill of costs and claiming to be allowed the amount charged therein to show that the same is fair and reasonable and ought to be allowed; it is not for the taxing officer to allow the amount claimed merely because it has been paid or because the unsuccessful party to the proceedings has not adduced evidence to show that the charge is excessive.

Quite often a good deal of work is done in the initial stages of the case and costs thereof might very well be regarded by the Taxing Master as necessary and proper. In fact, even where the evidence is collected, in whole or in part, before the action is commenced, the solicitor wil not be prejudiced, if the costs of collecting that evidence were necessary, and were properly incurred for the prosecution or defence of the cause. See the case of *Bright's Trustee* v. *Sellar*,[10] and the later case of *Pecheries Ostendaises* v. *Merchants' Marine*,[11]

In the *Pecheries'* case it was argued that no costs ought to be allowed which have been incurred before action brought. The Court of Appeal rejected this argument. Atkin L. J., in dealing with this submission said, at page 762: —

"... The other matter that arises is as to the costs incurred before the action was commenced. That has nothing to do with the stay of proceedings, but it is a pure question whether or not the costs incurred before the writ was issued are costs which the plaintiffs can recover under an order for the costs of the action. Upon that question it appears to me to be very important to bear in mind that the Taxing Masters have got to apply the words of Order LXV, r.27, sub-r.29. That rule is the guiding rule in the taxation of costs. It is intended to sum up generally the principles upon which costs are awarded; and I cannot help thinking that if that rule were really rigorously applied by everybody — and by 'rigorously applied' I mean applied in all cases and giving full effect to the width of its language — there would be many fewer complaints by successful litigants than there are at the present moment. It is a rule which is intended to give to the successful litigant a full indemnity for all costs reasonably incurred by him in relation to the action. It says in terms that the Taxing Master is to allow 'all such costs, charges and expenses, as shall appear to him to have been necessary or proper for the attainment of justice.' That is the whole principle that the Taxing Master has got to apply. It is quite obvious that those costs are not limited to costs incurred after the writ has been issued. Costs incurred before action brought are allowed every day to a limited extent, as appears by the Taxing Masters' Practice Notes, which, though not binding, govern the practice. I am not at all sure that the conventions fixed by the Masters are not too narrow, but they may be very wise, because they deal with the costs of this kind which are commonly in dispute; but their discretion as to costs certainly extends beyond that. The Taxing Master has discretion in every case to decide whether the costs incurred before the action were necessary or proper for the attainment of justice; and the costs the Taxing Master has allowed in the present case may very well be included in that expression. A very good example of this was put in argument; it was a case of an accident happening owing to a railway bridge breaking down, when the railway bridge has to be replaced forthwith and the state of the bridge is said to be the cause of the action. In such a case it is essential that there should be an immediate inspection by skilled witnesses of the state of that bridge. In those circumstances the Taxing Master might well hold that such costs incurred before the issue of the writ were necessary for the attainment of justice, because the actual facts to be ascertained from such an inspection could not be ascertained at a later date; and of course the Taxing Master in coming to a conclusion would have to consider the probabilities of the defendant disputing liability. That again is purely a question of fact for the Taxing Master...."

As party and party costs have to be taxed strictly in accordance with the Rules of the Supreme Court, it is necessary to examine the relevant provisions of the Rules and the decisions thereon, if any. In the present case the "getting up" fee of $700 is claimed

under Order 59, Appendix 1, item 26 and the notes (b), (c) and (j) to item 26 which read as follows: —

"26. Instructions for trial or hearing of any cause or matter, whatever the mode of trial or hearing.

... Discretionary

27. xxx xxx xxx

Note to items 26 and 27.

Items 26 and 27 are intended to cover the doing of any work, not otherwise provided for, necessarily or properly done in preparing for a trial, hearing or appeal, or before a settlement of the matters in dispute, including —

(a) taking instructions to sue, defend, counterclaim or appeal, or for any pleading, particulars of pleading, affidavit, preliminary act claim in a reference under Order 70, Rule 39;

(b) considering the facts and law;

(c) attending on and corresponding with client;

x

x

x

(j) the general care and conduct of the proceedings."

There is no reported decision on the abovementioned rule nor are the other local decisions which I have exmined of any help. The first is the decision in the Singapore case of *Chop Yoon Kee Hang* v. *Motor Union Insurance Co., Ltd.*[12] where Murison C.J. affirmed the Registrar's decision that no "getting up" fee could be allowed unless the case has been set down for trial. As this decision was under the Civil Procedure Code of 1907, it has no application today.

The next case is *The State of Selangor* v. *Kepong Dredging Co., Ltd.*,[13] where Thorne Ag. C.J. was asked to allow a "getting up" fee under item 3 of the Second Schedule of the 1929 Rules which read as follows: —

"The Registrar may allow a general fee for consultation of authorities, attendance upon witnesses, producing evidence and getting up the case for trial or for appeal, having regard to all the circumstances."

In rejecting the claim, his Lordship held that it is premature for a solicitor to attend upon witnesses to produce evidence or get up the case for trial before the pleadings are closed and issues joined.

In the Johore case of *Lee Kheng* v. *Yap Ee Boon*,[14] Thorne J. in an oral judgment held that "the solicitor for any of the parties in proceedings before the Registrar, if the matter is contested, is entitled to a getting up fee according to the nature of the case". The proceedings before the Registrar in that case were an inquiry at which witnesses were called on both sides and evidence was taken on the issue of the ownership of a house which had been attached by a creditor and a third party claiming ownership had objected to the attachment.

In the Perak case of *Looi Guan Kway* v. *Low Lean Bok*,[15] Aitken J. held that no fee "for considering authorities and getting up of the case" is chargeable in the case of an application in chambers, even though adjourned into open court for argument and that the adjournment into open court did not alter the nature of the application which remained an application in chambers for the purposes of taxation. This decision was based on the construction of item 86 in the Schedule to Rule 4 of the F.M.S. Supreme Court Rules, 1932, which item read as follows: —

"The Registrar may allow a general fee for instructions for trial, for attendances upon witnesses, procuring evidence, considering authorities and getting up the case having regard to all the circumstances. This fee may be allowed in respect of any hearing in open court whether by reason of a plaint, motion, petition or originating summons or upon an issue."

The decision in this case that a getting up fee could not be allowed in respect of any hearing in open court under a summons in chambers has been nullified by item 80 in the Schedule of the 1957 Rules of the Supreme Court of Malaya.

The decision in *Looi Guan Kway's* case was not followed in the former Straits Settlements in *Re Kana Moona Syed Abu-Bakar decd.*[4] In explaining that his decision in *Looi Guan Kway's* case had no application in the Colony, Aitken J. said, at page 8: —

"... In that case the decision turned entirely on the proper construction of item 86 in the Schedule to the F.M.S. Supreme Court Rule 4 of 1932 which provides for a getting up fee 'in respect of any hearing in open court whether by reason of a plaint, motion, petition or originating summons or upon an issue.' Upon the wording of that item I held, for the reasons elaborated in my judgment, that no getting up fee is chargeable in the F.M.S. in the case of a summons in chambers, even though adjourned into court for argument. The corresponding item in Schedule C to the Rules of the Supreme Court of the S.S. is item 79, which provides for a 'getting up fee' in respect of any hearing in open court whether under writ, motion, petition or summons or upon an issue."

Aitken J. held that in reducing the "getting up fee" for the reason that there had been no trial of the issue, the Registrar "acted on a wrong principle and that the true test to apply is not whether or no an issue has proceeded to trial, but whether or no a solicitor and advocate has acted reasonably and properly in getting up his client's case in readiness for a trial."

The next case on this subject is *Jendol & anor.* v. *Ng Beng Chan*,[16] Although this case was not set down for trial, Wee Chong Jin J. (as he then was) affirmed the Registrar's order allowing a getting up fee of $750 under either item 81 or 82 of Schedule C of the Rules of the Supreme Court. The facts which gave rise to the taxation were as follows. On 7th December 1961 the plaintiffs as personal representatives of the estate of Mahat bin Mohamed Dewi, deceased, filed a writ accompanied by a statement of claim in which they claimed damages against the defendant under section 12 of the Civil Law Ordinance (Cap. 24). Having been duly served with the writ the defendant entered appearance and filed his defence denying negligence and the claim for damages and in the alternative, alleging contributory negligence.

On 3rd February 1962, two days after the defence was filed, and before the case was set down for trial the defendant paid $16,000 into court. As there were minors among the dependants of the deceased, the court's approval was sought and obtained in respect of settlement at this sum.

On the taxation of the bill of costs, before the Registrar, the plaintiffs' solicitors submitted that they were entitled to a getting up fee under item 81 or 82 of Schedule C. Item 81 reads as follows: —

"The Registrar may allow a general fee for instructions for trial, for attendances upon witnesses, procuring evidence, con-

sidering authorities and getting up the case, having regard to all the circumstances. This fee may be allowed in respect of any hearing in open court whether upon writ, motion, petition or summons or upon an issue."

and item 82 reads: —

"Or the details of the work done may be separately charged for, in which case the general fee will not be allowed."

The original rule relating to the getting up fee was item 78 of Schedule C to the Civil Procedure Code, 1907, which read as follows: —

"The Registrar may allow a general fee for instructions for trial, for attendances upon witnesses, and procuring evidence and getting up the case, having regard to all the circumstances. This fee can only be allowed once in an action."

The defendant's solicitors objected to the getting up fee on the ground that it could not be allowed when the action had not been set down for trial and there was only an application in chambers and not in open court. The Registrar overruled both these objections and allowed a getting up fee of $750.

On appeal, before Wee Chong Jin J. (as he then was) it was argued for the defendant that item 78 or 79 of the Civil Procedure Code, 1907 (which provided that a getting up fee could be allowed once in an action) was amended in 1934 to empower the Registrar to allow a getting up fee only in respect of a hearing in open court, and therefore no getting up fee could be allowed in the case under consideration. The practice of allowing a "getting up" fee after the case has been set down for hearing, a practice although assented to by practitioners for some 30 years, was also attacked as being inconsistent with the effect of the current rule. The plaintiff's argument was that since the words "this fee can only be allowed once in an action" in the 1907 rule were deleted in 1934, the intention of the legislature was that a "getting up" fee could be earned more than once. His Lordship dismissed the appeal against the decision of the Registrar. No written judgment was given in this case but it is clear from the facts that his Lordship was of the view that a solicitor is entitled to a "getting up" fee for work done which was necessary and proper even though the case has not been set down for trial. The "getting up" fee in this case was clearly justified on the ground that in a "running down" case, if a solicitor has to decide whether the amount paid into court should be accepted he has to go into the questions of liability and quantum and this necessitates some "getting up".

In the Perak case of *Lee Bang* v. *Nadzri*,[17] MacIntyre J. (as he then was) held that where the proceedings in an action have reached a stage when a hearing in open court is inevitable the legal advisers of the parties are entitled to be in readiness for the hearing and must be compensated for the work done irrespective of whether there was actually a hearing in open court or not.

The last and the most recent decision on the subject is the case of *Mahmood bin Ghani* v. *Seow Bin Hwa*.[18] The decision in this case was based on the express provisions of Order LXII rule 49(2) which have been repealed and it is therefore of no value today.

The following general principles emerge from the cases that have been examined: —

(1) A solicitor is entitled to costs of such work as was reasonably necessary for the prosecution or defence of his client's case.

(2) The taxing officer, having regard to the circumstances of each case, must decide whether the work was necessary and proper and the time for doing it had arrived.

(3) The taxing officer has a discretion to allow charges and expenses properly and reasonably incurred in procuring evidence before notice of trial, and even when the evidence is collected, in whole or in part, before the action is commenced. The test is whether the costs incurred before the commencement of the action were necessary and proper for the attainment of justice.

(4) A solicitor is entitled to a "getting up" fee for work done which was necessary and proper even though the case had not been set down for trial.

(5) The court will not interfere with the decision of the taxing officer upon a mere question of quantum if the taxing officer has exercised his discretion after consideration of all the circumstances and if no question of principle arises. It is only when such discretion has been exercised on some wrong principle or the quantum allowed is obviously wrong that a judge will interfere.

It follows from these general principles, that there may well be cases in which a "getting up" done before the issue of a writ would be held to be necessary and proper and a fee for it allowed. One example of such a case would be a libel action. I do not think any responsible solicitor would issue a writ in an action for libel without doing his "getting up" and a fee for it, having regard to the nature of the action, would be justified, even if the case was settled before notice of trial. In the present case, the claim of the plaintiffs was for a liquidated sum due on non-accepted bills of exchange which were for goods sold and delivered. I do not think that the "getting up" stated to have been done before the issue of the writ, for which a fee of $700 was claimed, was necessary and proper in the circumstances of this case. There is, of course, in one sense, some "getting up" necessary before the issue of every specially endorsed writ, but such getting up is adequately compensated by the fee allowed under Part II of Appendix 2 of Order 59, which deals with costs on judgments without trial for a liquidated sum.

In this case the plaintiffs elected to tax their bill of costs under rule 10(2) of Order 59 which provides that if a plaintiff accepts money paid into court in satisfaction of the cause of action he may, unless the court otherwise orders, tax his costs incurred to the time of receipt of the notice of payment into court. On the facts, the plaintiffs were clearly entitled to tax their bill under this rule and although they were, in my opinion not entitled to a "getting up" fee in the proper sense of this term, they were entitled to a fee under item 26 of Appendix 1 to Order 59 because the Note to this item states that it is intended to cover the

doing of any work, not otherwise provided, necessarily or properly done before a settlement of the matter in dispute. And this work, according to the Note, includes taking instructions to sue, considering the facts and law and attending on and corresponding with client, all of which the plaintiffs' solicitors claimed to have done in this case. The fee for such work under item 26 is entirely in the discretion of the taxing officer and will of course depend on the nature of the case and the amount of work necessarily and properly done. In my judgment the Registrar should have allowed in this case a fee under item 26 in lieu of the $700 claimed as a "getting up" fee. The proper course now would be to remit the matter back to the Registrar for him to consider and award a reasonable fee under item 26, but as this matter has already been considerably delayed, I propose to deal with it myself. I award the plaintiffs a fee of $200 under Item 26 in lieu of the $700 claimed which was disallowed by the Registrar. The appeal is allowed with costs.

Appeal allowed.

Solicitors: *Drew & Napier; Ong Swee Keng & Co.*

MALAYSIAN REPORTS

LIM SENG HEE & ANOR. v. LEE TUAN WEN & ANOR.

[O.C.J. (Chang Min Tat J.) September 9, 1972]

[Ipoh — Civil Suit No. 398 of 1970]

Mining — Contract — Sub-lease — Stoppage of mining operation — Application for cancellation of lease — Damages — Mining Enactment (F.M.S. Cap. 147), s. 16(iii)(b) & (c).

The plaintiffs in this action were the owners of a piece of land held under a Mining Certificate No. 30/66. On February 27, 1967, they granted a sub-lease of the land to the defendants "for the period of the mining certificate or mining lease issued in place thereof and any renewals or extensions."

Clause 8(iii) of the sub-lease read as follows:—

"that this sub-lease shall be liable to cancellation at any time at the discretion of a Senior Inspector of Mines or the Court upon proof that the sub-lessees have not during the period of 6 months employed at least 57 labourers or labour-saving apparatus equivalent thereto as prescribed in section 16(iii)(b) of the Mining Enactment for not less than 1 month in mining the said land."

The plaintiffs alleged that since April 1, 1970, the defendants have completely stopped mining the land. Despite a written notice and various other requests, they did not resume mining. Finally on October 5, 1970, the plaintiffs through their solicitors advised the defendants of their intention to apply for the cancellation of the lease.

The plaintiffs claimed to have suffered damage in the form of loss of tribute or profits from April 1, 1970, and prayed for cancellation of the sub-lease, an injunction, damages for loss of tribute or profits and costs.

The defence denied the allegations that the defendants had been in breach of the provision for continuous mining and alleged that the defendants had in fact carried out considerable preparatory mining work, prior to the submission of a mining scheme to the Mines Department. The defendants accordingly prayed for the dismissal of the action with costs.

Held: (1) on the facts no mining operations were carried on after April 1, 1970 until the commencement of the action and therefore there was a breach by the defendants of clause 8(iii) of the sub-lease;

(2) in the circumstances of the case, this was not a suitable matter for cancellation;

(3) the damages could not be the actual loss of tribute or the reasonable interest that could accrue on this sum if paid but the loss of use. In this case $2,000 for damages for breach of contract should be awarded.

CIVIL SUIT.

Peh Swee Chin for the plaintiffs.

N. T. Rajah for the defendants.

Chang Min Tat J.: The plaintiffs in this action commenced by writ on 28 October 1970 are the owners of a piece of land held under a Mining Certificate No. 30/66. On 27 February 1967 they granted a sub-lease of the land to the defendants "for the period of the mining certificate or mining lease issued in place thereof and any renewals or extensions."

Clause 8(iii) of the sub-lease reads as follows: —

"that this sub-lessee shall be liable to cancellation at any time at the discretion of a Senior Inspector of Mines or the Court upon proof that the sub-lessees have not during the period of 6 months employed at least 57 labourers or labour-saving apparatus equivalent thereto as prescribed in section 16(iii)(b) of the Mining Enactment for not less than 1 month in mining the said land."